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Date: August 17, 2010

Signature: 

(Kym Y. Moore)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.: 10/798,739  
Confirmation No.: 6427  
Filing Date: March 10, 2004  
Inventor(s): George D. HERMANN et al.  
Title: METHOD AND DEVICE FOR USE IN MINIMALLY INVASIVE  
APPROXIMATION OF MUSCLE AND OTHER TISSUE  
Examiner: Melissa K. Ryckman  
Group Art Unit: 3773

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**RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Washington, D.C. 22313-1450

Sir:

This is a response to the Notification of Non-Compliant Appeal Brief mailed June 18, 2010. A response for which was due July 18, 2010. Filed herewith is a Petition and fee for a 1-month extension of time, thereby extending the deadline for response to August 18, 2010. Accordingly, this response is timely filed.

Per the Notification, "the entire brief is not needed only the corrected section." (sic) Accordingly, the corrected Section V. Summary of the Claimed Subject Matter begins on page 2, below.

**V. Summary of Claimed Subject Matter**

The independent claims on appeal are Claims 7 and 41. All noted specification locations below are for exemplary purposes only and non-limiting.

Claim 7 is to a tissue approximating device, generally shown in Figure 19. The claim recites first and second jaw members (shown generally as 11 and 12 in Figure 1B, and also 194 and 195 in Figure 19) having terminal ends moving toward one another (see e.g., Figures 7, 8, 19 and page 18, lines 4-6), the moveability of the terminal ends defining a plane of coaptation (also see e.g., Figures 7, 8, 19 and page 9, lines 19-21 and page 17, lines 22-23, page 18, lines 4-6);

The claim also recites a tissue engaging rod (generally shown as 8 in Figure 1B and 196 in Figure 19). The claim recites that the tissue engaging rod has a tissue engaging portion that extends generally out of the plane of coaptation in a first position (see Figures 1B and 19, page 9, line 17 – page 10, line 3 and page 18, lines 2-5). The claim also recites that the tissue engaging rod (8 in Figure 1B and 196 in Figure 19) is moveable to a second tissue engaging position that transects the plane of coaptation thereby positioning tissue contacted by the tissue engaging rod between the first jaw member and the tissue engaging rod, and between the second jaw member and the tissue engaging rod (see Figure 19, page 17, lines 18-20 and page 18, lines 2-6).

The claim also recites that the tissue engaging rod is configured to extend independently of the first jaw member (see Figures 1B and 19, page 17, lines 18-20 and page 18, lines 1-6).

Claim 41 is to a tissue approximating device, generally shown in Figure 19. The claim recites first and second jaw members (shown generally as 11 and 12 in Figure 1B, and also 194 and 195 in Figure 19) having proximal ends moveable toward one another (see e.g., Figures 7, 8, 19 and page 18, lines 4-6), the moveability of the proximal ends defining a plane of coaptation (also see e.g., Figures 7, 8, 19 and page 9, lines 19-21 and page 17, lines 22-23, page 18, lines 4-6).

The claim also recites a tissue engaging rod (generally shown as 8 in Figure 1B and 196 in Figure 19). The claim recites that the tissue engaging rod has a tissue engaging

portion that can extend generally out of the plane of coaptation in a first position (see Figures 1B and 19, page 9, line 17 – page 10, line 3 and page 18, lines 2-5). The claim recites that the tissue engaging rod is moveable to a second tissue engaging position that transects the plane of coaptation thereby positioning tissue contacted by the tissue engaging rod between the first jaw member and the tissue engaging rod, and between the second jaw member and the tissue engaging rod (see Figure 19, page 17, lines 18-20 and page 18, lines 2-6).

The claim also recites that the tissue engaging rod is configured to extend independently of the first jaw member (see Figures 1B and 19, page 17, lines 18-20 and page 18, lines 1-6).

**CONCLUSION**

Applicant believes all outstanding issues raised in the Notification of Non-Compliant Appeal Brief mailed June 18, 2010 are addressed herein and that the claims are in condition for allowance. Notably, the independent claims 7 and 14 have been mapped to the specification by page, line number and to the drawings.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to **Deposit Account No. 50-3973** referencing Attorney Docket No. **FGRTNA00602**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'D. Levine', is written over a horizontal line.

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